

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5931 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : YES
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

THAMES ENGINEERING EXPORTS PVT. LTD.

Versus

RAM AASHRE SOBHANATH

Appearance:

MR ASHISH H SHAH for Petitioner No. 1
MR CHIRAG M PAWAR for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 05/04/2004

ORAL JUDGEMENT

1. Rule. Mr.Pawar, learned Counsel appears and waives service of rule on behalf of the respondent. With the consent of the parties, the matter is taken up for final hearing today.
2. The short facts of the case are that the respondent raised the dispute under the Industrial

Disputes Act, 1947 against the so-called termination from service by the petitioner. Thereafter the dispute is referred to the Labour Court for adjudication. However, pending the Reference No.1492/2000, Recovery Application was submitted by the respondent being Recovery Application No.2156/2000 before the Labour Court for recovery of the amount and other benefits, amounting to Rs.1,48,132.65. It is the case of the petitioner that one Mr.Jaiswal was appointed as Advocate to defend the proceedings. However, he did not properly defend the proceedings and the matter proceeded ex-parte before the Labour Court. The Labour Court ultimately, in absence of any evidence on the other side to disbelieve the statement of the applicant therein, who is respondent herein, passed the order dated 17-7-2002 in the said Recovery Application, whereby the amount of Rs.1,48,132.65 is ordered to be recovered with the cost of Rs.1,000/=. The petitioner herein, thereafter, preferred Misc. Application No.177/2000 in Recovery Application No.2156/2000 before the Labour Court under Rule 26A of Industrial Disputes Act, 1947 for setting aside the ex-parte order and to restore the matter for reconsideration. The Labour Court ultimately heard the said application and passed the order dated 13-12-2002, whereby it found that no actions were taken by the petitioner against its representative, who did not properly defended the proceedings and ultimately rejected the application for restoration and confirmed the earlier order. Under this circumstances, the petitioner has approached to this Court.

3. I have heard Mr.Shah, learned Counsel for the petitioner and Mr.Pawar, learned Counsel for the respondent.

4. The contention raised on behalf of the petitioner is that the Labour Court has not considered the aspects that for the default on the part of the lawyer, the party should not suffer. Mr.Shah has also submitted that the main Reference is pending and as per the petitioner the defence is that the respondent is not the employee of the petitioner and the petitioner had given security contract and he was the employee of that contractor. Mr.Shah submitted that the petitioner would agree for any cost which may be considered by the Court as appropriate compensation for default in not properly defending the proceedings before the Labour Court, in case this Court is inclined to refer the matter to the Labour Court for reconsideration.

5. On behalf of the respondent, Mr.Pawar submitted,

inter alia, that as such the respondent was the employee of the petitioner and the Labour Court has found that no sufficient cause is made out for not remaining present or not properly defending the proceedings of the recovery application and, therefore, the Labour Court has rightly exercised the discretion of rejecting the application and confirming the earlier order and, therefore, Mr.Pawar submitted that this Court may not interfere with the order passed by the Labour Court of rejecting the application for restoration.

6. Having considered the above, and the perusal of the order passed by the Labour Court below application for restoration shows that the Labour Court was mainly guided by the aspects as to whether the petitioner herein has taken any steps against the lawyer who did not remain present. As such it is well settled that in normal circumstances, the Court will see to it that the litigant may not suffer on account of the default caused by his lawyer or any representative. So far as taking action against the lawyer or representative is concerned, it is a matter between the litigant and his lawyer and it may be that one of the relevant circumstances to test the genuineness of the ground can be regarding taking action by the litigant against his lawyer, but merely because the action is not taken by any litigant against his lawyer, it cannot be concluded that there is no default on the part of the lawyer. In the present case, it came on record that the lawyer, Mr.Jaiswal was engaged and he did not properly defend the proceedings and the matter proceeded ex parte. It may be that the petitioner might not have taken action against Mr.Jaiswal, but on such aspects, in my view, the Labour Court committed error in concluding that the petitioner is trying to make allegation against the other person.

7. Apart from the above, in the matter of setting aside of the ex parte order, in my view, two aspects are required to be considered; one is the sufficient cause and even if the sufficient cause is not fully established, the Court has also to consider as to whether the cost for compensating the delay or default shall meet with the ends of justice or not, because the normal principle would be to render the decision on merits after giving opportunity to the party concerned. Thereby it cannot be said that in all matters the Court would consider the case for reconsideration by awarding cost to compensate the default, but at the same time, it would vary from facts to facts. If such a default has created irreversible situation or any other such extraordinary circumstances known to law, then this Court may decline

to reconsider the matter, even though there is an agreement to pay the cost by way of compensation.

8. In the present case, there are no such extraordinary circumstances. Further, the perusal of the order passed by the Labour Court shows that said aspects of awarding cost by way of compensation for default is not at all considered by the Labour Court. Considering the facts and circumstances of the case, it appears that when the workman has spent for litigation in the Recovery proceedings as well as is dragged to the litigation before this Court on account of the default by the petitioner, the amount of Rs.10,000/= shall be an appropriate amount for compensating the delay caused by the petitioner in not defending the proceedings before the Labour Court of Recovery Application No.2156/2000 as well as the cost of the present application. Since Mr.Shah has also agreed for payment of such amount on behalf of the petitioner, I find it proper to leave the matter at that stage without further observing the said aspects.

9. In view of the above, I find that if the petitioner pays the cost of Rs.10,000/= to the respondent, the Labour Court can be directed to decide the Recovery Application No.2156/2000 afresh. The learned Counsel appearing for both the sides have requested that since the Court is inclined to remand the matter to the Labour Court, some time bound direction may be given to the Labour Court for deciding the Recovery Application, so that the matter may not be further delayed and the learned Counsel for both the sides have also assured that they shall cooperate with the proceedings before the Labour Court in Recovery Application No.2156/2000.

10. Hence, the order dated 13-12-2002 passed by the Labour Court in Misc. Application No.177/2000 as well as the order dated 17-7-2002 passed by the Labour Court in Recovery Application No.2156/2000 are quashed and set aside on condition that the petitioner pays the amount of Rs.10,000/= as cost by way of compensation to the respondent within a period of three weeks from today and it is further directed that after the amount of cost is paid by the petitioner to the respondent, the Recovery Application No.2156/2000 shall stand restored to the file of the Labour Court and the Labour Court shall decide the said Recovery Application afresh as early as possible, preferably within a period of six months from the date of receipt of the writ of this Court.

11. The petition is allowed to the aforesaid extent.
Rule made absolute accordingly.

5.4.2004 (Jayant Patel, J.)
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